

230801

BEFORE THE SURFACE TRANSPORTATION BOARD

IAM - 4

In the Matter of:

STB Docket No. AB-1075X

**MANUFACTURERS RAILWAY COMPANY - DISCONTINUANCE
EXEMPTION - IN ST. LOUIS, MO**

ENTERED
Office of Proceedings

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Public Record

OPPOSITION OF IAM TO CARRIER'S MOTION TO STRIKE

The International Association of Machinists and Aerospace Workers ("IAM") has moved the Board to permit the filing of its Reply to the Manufacturers Railway Company's ("Manufacturers") Petition to Stay Pending Judicial Review one business day late. The Carrier, which clearly would not be prejudiced by allowing the filing of IAM's brief Reply¹, has moved to strike the IAM's filing.

In a Motion that is partly an ill-disguised reply brief in support of its Petition to Stay, Manufacturers seeks to reassure the Board that statements the IAM has highlighted in the Carrier's Petition mean something other than what they plainly express. For example, Manufacturers said this in its Petition:

Once MRS discontinues service, it would have no shipper revenues to fund [up to 6 years of termination] benefits....MRS cannot be required to cover losses from operations or from labor protection without shipper revenues adequate to fund those payments. (Petition p. 9).

and

...MRS's current employees would not be harmed by granting the stay petition...If MRS loses its appeal, it still would have no shipper revenues with which to fund the labor protective conditions. In other words, nothing would change with regard to the availability of funds that the Board may require be used for labor protection, and the affected employees would therefore be no worse off if the stay is granted. (*Id.* at 19).

IAM replied that these statements reflect a possible intent on Manufacturers' part to evade any

¹ The Board's August 10, 2011, decision to impose a 45-day housekeeping stay further supports the proposition that no harm would befall the Carrier by consideration of the IAM's Reply.

employee protection obligation the Board has imposed. IAM Reply at 2-3.

The Carrier says this is an "impertinent and scandalous implication." Motion to Strike at 3. We submit the IAM has presented a fair characterization of the representations in Manufacturers' Petition. The Union's Reply certainly does not rise to the level of what the Board, much less any other adjudicative forum, would consider impertinent or scandalous.² In any event, the Board surely is able to weigh all of the filings and determine whether the relief Manufacturers seeks in its Petition is warranted in the circumstances. In the course of doing that, the Board certainly will decide what weight and interpretation should be given Manufacturers factual representations, including the clarifications the Carrier now has offered in its Motion to Strike.³

For these reasons, Manufacturers' Motion to Strike IAM's Reply to the Carrier's Petition for Stay should be denied.

Respectfully submitted,



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² While Manufacturers quotes Section 1104.8 of the Board's rules that "redundant, irrelevant, immaterial, impertinent or scandalous matter" is subject to being stricken from a filing, the Carrier only relies on the "impertinent or scandalous" description to attack IAM's filing. It does not assert that the issue of Manufacturers' intentions or ability to pay is redundant, irrelevant [or] immaterial."

³ The Carrier has not responded to IAM's alternative suggestion that the Board, if it grants a stay, condition the stay upon Manufacturers (1) escrowing the estimated costs of protection or posting a bond to cover that amount the Carrier says the protection would cost and (2) continue to provide health insurance to the employees in accordance with the collective bargaining agreement during the pendency of the stay.

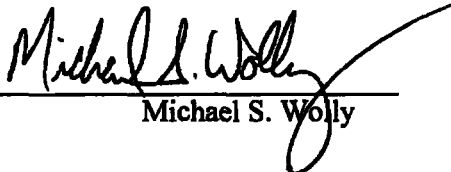
CERTIFICATE OF SERVICE

This is to certify that the foregoing Comment was served upon the following parties of record in this proceeding by fax and first-class mail this 11th day of May 2011.

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